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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2013-772*

11 **ARTHUR GARCIA**

12 28197 Angelica Place
13 Valencia, CA 91354

14 Registered Nurse License No. 456571

15 Respondent.

A C C U S A T I O N

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about August 31, 1990, the Board of Registered Nursing issued Registered
23 Nurse License Number 456571 to Arthur Garcia ("Respondent"). The Registered Nurse License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2013, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
3 any licensee, including a licensee holding a temporary or an inactive license, for any reason
4 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
11 licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code
12 provides, in pertinent part, that the Board may renew an expired license at any time within eight
13 years after the expiration.

14 7. Section 490 of the Code states, in pertinent part:

15 "(a) In addition to any other action that a board is permitted to take
16 against a licensee, a board may suspend or revoke a license on the ground that the
17 licensee has been convicted of a crime, if the crime is substantially related to the
18 qualifications, functions, or duties of the business or profession for which the license
19 was issued.

20 (b) Notwithstanding any other provision of law, a board may exercise any
21 authority to discipline a licensee for conviction of a crime that is independent of the
22 authority granted under subdivision (a) only if the crime is substantially related to the
23 qualifications, functions, or duties of the business or profession for which the
24 licensee's license was issued.

25 (c) A conviction within the meaning of this section means a plea or
26 verdict of guilty or a conviction following a plea of nolo contendere. Any action that
27 a board is permitted to take following the establishment of a conviction may be taken
28 when the time for appeal has elapsed, or the judgment of conviction has been
affirmed on appeal, or when an order granting probation is made suspending the
imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4 of the Penal Code."

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted
by a board within the department pursuant to law to deny an application for a license
or to suspend or revoke a license or otherwise take disciplinary action against a
person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions, and

1 duties of the licensee in question, the record of conviction of the crime shall be
2 conclusive evidence of the fact that the conviction occurred, but only of that fact, and
3 the board may inquire into the circumstances surrounding the commission of the
4 crime in order to fix the degree of discipline or to determine if the conviction is
5 substantially related to the qualifications, functions, and duties of the licensee in
6 question.

7 As used in this section, 'license' includes 'certificate,' 'permit,'
8 'authority,' and 'registration.'"

9 9. Section 2761 of the Code states, in pertinent part:

10 "The board may take disciplinary action against a certified or licensed
11 nurse or deny an application for a certificate or license for any of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to, the
13 following:

14 ...

15 (d) Violating or attempting to violate, directly or indirectly, or assisting
16 in or abetting the violating of, or conspiring to violate any provision or term of this
17 chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

18 ...

19 (f) Conviction of a felony or of any offense substantially related to the
20 qualifications, functions, and duties of a registered nurse, in which event the record of
21 the conviction shall be conclusive evidence thereof."

22 10. Section 726 of the Code states, in pertinent part:

23 "The commission of any act of sexual abuse, misconduct, or relations
24 with a patient, client, or customer constitutes unprofessional conduct and grounds for
25 disciplinary action for any person licensed under this division, under any initiative act
26 referred to in this division and under Chapter 17 (commencing with Section 9000) of
27 Division 3."

28 **REGULATORY PROVISION**

11. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the
qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those
violations listed in subdivision (d) of Penal Code Section 11160.¹

...

¹ Penal Code section 11160, subdivision (d)(20), states: "[f]or the purposes of this section, 'assaultive or
abusive conduct' shall include...[l]ewd and lascivious acts with a child, in violation of Section 288."

1 (d) Any conviction or act subject to an order of registration pursuant to
2 Section 290 of the Penal Code.”

3 **COST RECOVERY**

4 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Substantially Related Criminal Conviction)**

12 13. Respondent is subject to disciplinary action under section 490 and section 2761,
13 subdivision (f) of the Code in conjunction with California Code of Regulations, title 16, section
14 1444, in that Respondent was convicted of a crime substantially related to the qualifications,
15 functions and duties of a registered nurse, as follows:

16 14. On or about November 1, 2012, Respondent pled nolo contendere to and was
17 convicted of one felony count of violating Penal Code section 288(a) [lewd or lascivious acts with
18 a child] in the criminal proceeding entitled *The People of the State of California v. Arthur Garcia*
19 (Super. Ct. of California, County of Los Angeles, 2012, Case No. GA086250). The court ordered
20 Respondent to serve 365 days in Los Angeles County Jail and placed Respondent on probation
21 for three (3) years, with terms and conditions. The court also ordered Respondent to register as a
22 convicted sex offender. The circumstances underlying the criminal conviction are, as follows:

23 15. On or about April 27, 2012, Respondent, while working in the capacity of a registered
24 nurse at Huntington Hospital, redirected a camera monitor located in an eleven (11) year old
25 patient's room and touched the patient's vagina with his right hand using skin-on-skin contact on
26 two separate occasions, about 30 minutes apart.

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violations are described in more particularity in paragraphs 13 through 18 above, inclusive and hereby incorporated by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 456571, issued to Arthur Garcia;
2. Ordering Arthur Garcia to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: March 15, 2013

for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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